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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 94-150
Regulations Governing Attribution)	
Of Broadcast and Cable/MDS Interests)	
)	
Review of the Commission's)	MM Docket No. 92-51
Regulations and Policies Affecting)	
Investment in the Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	

TO: The Commission

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS
IN SUPPORT OF PETITIONS FOR RECONSIDERATION**

The National Association of Broadcasters ("NAB")¹ submits these comments in support of three petitions seeking partial reconsideration of the Commission's *Memorandum Opinion and Order on Reconsideration* in the above-captioned proceeding.² NAB agrees with these petitions that the Commission should reconsider its elimination of the single majority

¹ NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

² See *Memorandum Opinion and Order on Reconsideration* in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 00-438 (rel. Jan. 19, 2001) ("*Broadcast Attribution MO&O*").

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shareholder exemption and should reinstate that exemption as part of the broadcast ownership attribution rules.³

The single majority shareholder exemption provided that, where a single shareholder owned more than 50 percent of the voting stock of a corporate licensee, the interests of the minority shareholders were not attributable. Following a lengthy rulemaking proceeding in which the single majority shareholder exemption was specifically considered, the Commission determined in 1999 to retain the exemption as part of the broadcast attribution rules.⁴ Just a few months later, however, the Commission eliminated the single majority shareholder exemption from the cable attribution rules.⁵ In a very brief discussion in the *Cable Attribution Order*, the Commission cited the “lack of a record” supporting retention of the exemption and its “concern that a minority shareholder may be able to exert influence over a company even where a single majority shareholder exists.” *Id.* at 19046.

In response to a petition for reconsideration of the *Broadcast Attribution Order*, the Commission earlier this year similarly eliminated the single majority shareholder exemption in the broadcast context because it saw “no rational basis” for justifying elimination of “the exemption for the cable ownership rules while retaining it for the broadcast ownership rules.” *Broadcast Attribution MO&O* at ¶ 41. In eliminating the exemption in the broadcast context, the Commission reiterated its concern previously expressed in the *Cable Attribution Order* that

³ See Petitions for Reconsideration of Paxson Communications Corporation, filed March 15, 2001; Viacom Inc., filed March 15, 2001; and National Broadcasting Company, Inc., filed March 12, 2001.

⁴ *Report and Order* in MM Docket Nos. 94-150, 92-51 and 87-154, 14 FCC Rcd 12559, 12574, 12579 (1999) (“*Broadcast Attribution Order*”).

⁵ *Report and Order* in CS Docket Nos. 98-82 and 96-85, 14 FCC Rcd 19014, 19046 (1999) (“*Cable Attribution Order*”).

minority shareholders “have the potential to influence a licensee’s actions.” *Broadcast Attribution MO&O* at ¶ 43.

Only a month and a half after the Commission’s elimination of the broadcast single majority shareholder exemption, the U.S. Court of Appeals for the District of Columbia Circuit reversed the Commission’s decision to eliminate that exemption in the cable attribution rules. *See Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001). The Court stated that “[r]emoval of the exemption,” as “a tightening of the regulatory screws,” required “some affirmative justification,” but “the Commission effectively offer[ed] none.” *Id.* at 1143. Moreover, the court dismissed the Commission’s expressed “concern” about the “possibility of influence” exerted by minority shareholders because this concern was not supported by any “finding[s] grounded in experience or reason.” *Id.*

NAB agrees with the three petitioners that, in light of the Court of Appeals’ recent decision in *Time Warner*, the Commission should reconsider its elimination of the single majority shareholder exemption from the broadcast ownership attribution rules. In eliminating the exemption, the Commission merely repeated that minority shareholders have the “potential to influence a licensee’s actions,” *Broadcast Attribution MO&O* at ¶ 43, but this concern remains unsupported by “finding[s] grounded in experience or reason.” *Time Warner*, 240 F.3d at 1143. Certainly the Commission has not presented a “reasoned analysis” for eliminating its long-established single majority shareholder exemption in the broadcast context.⁶ In addition, we agree with the Commission that there is “no rational basis” that would justify eliminating the

⁶ *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Company*, 463 U.S. 29, 42 (1983) (“an agency changing its course . . . is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance”). *See also ACT v. FCC*, 821 F.2d 741, 746 (D.C. Cir. 1987) (court found

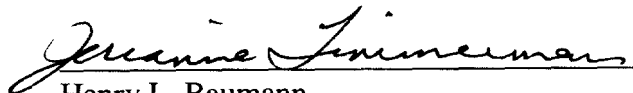
exemption for the cable ownership rules while retaining it for the broadcast rules. *Broadcast Attribution MO&O* at ¶ 41. Because the D.C. Circuit Court of Appeals has reversed the elimination of the exemption in the cable context, the Commission should similarly reverse its elimination of the exemption in the broadcast context.

For all the reasons set forth above, the Commission should reconsider its elimination of the single majority shareholder exemption and should reinstate that exemption as part of the broadcast ownership attribution rules.

Respectfully submitted,

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April 19, 2001

that the FCC had failed to explain adequately its alteration of a “long-established policy,” offering “neither fact nor analysis” to support its action).

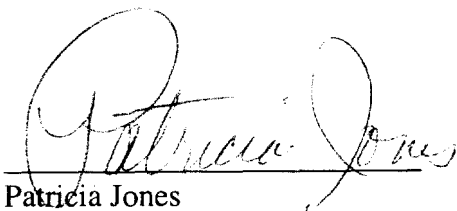
CERTIFICATE OF SERVICE

I, Patricia Jones, Legal Secretary for the National Association of Broadcasters, hereby certifies that a true and correct copy of the foregoing Comments of the National Association of Broadcasters was sent this 19th day of April, 2001, by first class mail, postage prepaid to the following:

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